

# EUROPEAN PARLIAMENT

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## **REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (COM(2008)0637 – C6-0340/2008 – 2008/0193(COD))

Committee on Women's Rights and Gender Equality

Rapporteur: Edite Estrela

Rapporteur(\*): Jamila Madeira, Committee on Employment and Social Affairs

(\*) Associated Committee – Rule 47 of the Rules of Procedure

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	47
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS (*).....	51
PROCEDURE .....	77

(\*) Associated Committee – Rule 47 of the Rules of Procedure



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding  
(COM(2008)0637 – C6-0340/2008 – 2008/0193(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0637),
  - having regard to Article 251(2) and Articles 137(2) and 141(3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0340/2008),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Women's Rights and Gender Equality and the opinion of the Committee on Employment and Social Affairs (A6-0000/2009),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

### **Amendment 1**

#### **Proposal for a directive – amending act Title of the Directive**

*Text proposed by the Commission*

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

*Amendment*

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding ***and on the introduction of measures to support workers in balancing work and family rights and responsibilities***

### *Justification*

*The extension of the scope of the directive is possible due to the combined legal basis, which includes Article 141(3) of the EC Treaty. The simultaneous treatment reinforces the message to business that human reproduction must concern men and women.*

### **Amendment 2**

#### **Proposal for a directive – amending act Recital 4**

##### *Text proposed by the Commission*

(4) Equality between men and women is a fundamental principle of the European Union. Articles 21 and 23 of the Charter of Fundamental Rights of the European Union prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas.

##### *Amendment*

(4) Equality between men and women is a fundamental principle of the European Union. Articles 21 and 23 of the Charter of Fundamental Rights of the European Union prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas, ***including in the achievement of a work-life balance.***

### **Amendment 3**

#### **Proposal for a directive – amending act Recital 5 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(5a) In the judgment of the Court of Justice of the European Communities of 26 February 2006 in Case C-506/06 Mayr v Flöckner<sup>1</sup>, the Court held that direct discrimination on grounds of sex occurs if a female employee is placed at a disadvantage on account of absence in connection with IVF treatment.***

<sup>1</sup> [2008] ECR I-01017

## **Amendment 4**

### **Proposal for a directive – amending act Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC<sup>1</sup> lays down minimum requirements to help working parents reconcile their work and parental responsibilities.***

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<sup>1</sup> OJ L 145, 19.6.1996, p. 4.

#### *Justification*

*Council Directive 96/34/EC is a framework agreement between BusinessEurope (UNICE), CEEP and the ETUC on parental leave and is an important addendum to the proposal amending Directive 92/85/EEC as it lays down minimum requirements to help working parents reconcile their work and parental responsibilities.*

## **Amendment 5**

### **Proposal for a directive – amending act Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

***(6b) The objectives set out in the Presidency Conclusions of the Barcelona European Council of 15 and 16 March 2002 stated that Member States should remove obstacles to women's involvement in the labour market and provide by 2010 childcare facilities for at least 90% of children between the age of three and the compulsory schooling age and for at least 33% of children under the age of three, and that such children should have equal access to such facilities in towns and rural areas.***

### *Justification*

*At its March 2002 meeting in Barcelona, the European Council concluded that Member States should remove obstacles to women's involvement on the labour market and make provision by 2010 for childcare facilities for at least 90% of children between the age of three and the compulsory schooling age and for at least 33% of children under the age of three, and that such children should have equal access to such facilities in towns and rural areas.*

### **Amendment 6**

#### **Proposal for a directive – amending act Recital 6 c (new)**

*Text proposed by the Commission*

*Amendment*

***(6c) The Commission Communication of 4 July 2006 entitled "Towards an EU Strategy on the Rights of the Child" states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals.***

### *Justification*

*The communication states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals. With reference to this directive, this means ensuring that all children may be breastfed and receive appropriate care in accordance with their needs as regards development and access to adequate quality care.*

### **Amendment 7**

#### **Proposal for a directive – amending act Recital 6 d (new)**

*Text proposed by the Commission*

*Amendment*

***(6d) The World Health Organisation recommendation of 16 April 2002 on a global strategy on infant and young child feeding states that exclusive breastfeeding during the first six months of a child's life guarantees optimum growth and development.***



### *Justification*

*According to the WHO, exclusive breastfeeding during the first six months of a child's life guarantees optimum growth and development.*

## **Amendment 8**

### **Proposal for a directive – amending act Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8a) Maternity leave under this Directive should not conflict with Member States' other rules on parental leave and this Directive should not undermine those rules. Maternity leave and parental leave are complementary and when used in combination can promote a better balance between work and family life.***

### *Justification*

*In its explanatory memorandum the Commission draws an artificial distinction between maternity leave and parental leave. Both models complement each other, and using them in combination can promote a better balance between work and family life.*

## **Amendment 9**

### **Proposal for a directive – amending act Recital 9**

*Text proposed by the Commission*

*Amendment*

(9) The vulnerability of pregnant workers and of workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least **18** continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least six weeks allocated after confinement.

(9) The vulnerability of pregnant workers and of workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least **20** continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least six weeks allocated after confinement.

## **Amendment 10**

**Proposal for a directive – amending act  
Recital 12**

*Text proposed by the Commission*

(12) On the basis of the principle of equal treatment, the Court has also recognised the protection of employment rights of women, and in particular their right to return to the same or an equivalent job, on terms that are no less favourable, as well as to benefit from any improvement in working conditions introduced during their absence.

*Amendment*

*(Does not affect English version.)*

**Amendment 11**

**Proposal for a directive – amending act  
Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) In view of demographic trends in the European Union, it is necessary to promote an increase in the birth-rate by means of specific legislation and measures to combine work, private life and family life more effectively.***

**Amendment 12**

**Proposal for a directive – amending act  
Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

***(12b) A post termed ‘equivalent’ pursuant to Article 11(2)(c) should mean a post that is essentially the same as the former post, as regards both the salary paid and the duties to be performed.***

**Amendment 13**

**Proposal for a directive – amending act**  
**Recital 13**

*Text proposed by the Commission*

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection.

*Amendment*

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection, ***in order to safeguard their rights to decent working conditions and a better balance between family life and work.***

**Amendment 14**

**Proposal for a directive – amending act**  
**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) In the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life<sup>1</sup>, Member States were encouraged to consider whether, under their respective legal systems, working men might be granted a non-transferable individual right to paternity leave, without any loss of employment rights.***

<sup>1</sup> OJ C 218, 31.7.2000, p. 6.

*Justification*

*In the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life, Member States were encouraged to consider whether, under their respective legal systems, working men might be granted a non-transferrable individual right to paternity leave, without any loss of employment rights; most Member States have responded favourably.*

**Amendment 15**

**Proposal for a directive – amending act**  
**Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

***(13b) For the purposes of helping workers reconcile their professional and family rights and obligations, it is essential to provide for longer maternity and paternity leave, including in the event of adoption.***

**Amendment 16**

**Proposal for a directive – amending act**  
**Recital 13 c (new)**

*Text proposed by the Commission*

*Amendment*

***(13c) To achieve true gender equality, it is essential for men to be given a binding entitlement to paternity leave, modelled on maternity leave – except as regards duration – with a view to gradually establishing the conditions required for balanced participation of men and women in work and family life. This entitlement should also be given to unmarried couples.***

**Amendment 17**

**Proposal for a directive – amending act**  
**Recital 13 d (new)**

*Text proposed by the Commission*

*Amendment*

***(13d) In the context of the European Union's ageing population and the Commission Communication of 12 October 2006 entitled "The demographic future of Europe – from challenge to opportunity", every effort will need to be made to ensure the effective protection of motherhood.***

### *Justification*

*In view of demographic changes and the importance of having more children, the necessary steps must be taken to ensure effective maternal leave.*

## **Amendment 18**

### **Proposal for a directive – amending act Recital 13 e (new)**

*Text proposed by the Commission*

*Amendment*

***(13e) In the December 2007 conclusions of the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on “Balanced roles for women and men for jobs, growth and social cohesion”, the Council recognised reconciliation of work and family and private life to be a key area as regards the promotion of gender equality in the labour market.***

### *Justification*

*Nas Conclusões do Conselho Europeu de Dezembro de 2007 sobre “Participação equilibrada das mulheres e dos homens na vida profissional, no crescimento e na coesão social”, o Conselho reconhece a conciliação do trabalho com a vida familiar e privada como umas das áreas-chave para a promoção da igualdade de género no mercado de trabalho. Além disso, é referido no ponto 7 que “As mulheres são ainda por vezes forçadas a escolher entre os filhos e a carreira, em especial devido à persistência dos estereótipos sexistas e à desigual partilha das responsabilidades familiares e domésticas entre mulheres e homens, sendo sobretudo as mulheres responsáveis pela educação dos filhos e pelos cuidados a outros dependentes”.*

## **Amendment 19**

### **Proposal for a directive – amending act Recital 13 f (new)**

*Text proposed by the Commission*

*Amendment*

***(13f) To achieve true gender equality, it is essential for men to be given a binding entitlement to paternity leave, modelled on maternity leave, except as regards duration, with a view to gradually establishing the conditions required for balanced participation of men and women***

*in work and family life.*

*Justification*

*Paternity leave should be established on a binding basis so as to ensure that men will not be made, on account of social pressure, to forgo their entitlement. A signal should be sent to the labour market to the effect that men too have to spend time away from the workplace and their job when they have children. Economic activity must consequently be organised in such a way as to allow for human reproduction, which is a right and responsibility in equal measure for men and women alike, as well as being a pre-eminent social value.*

**Amendment 20**

**Proposal for a directive – amending act  
Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

*(18a) Member States should introduce into their national legal systems measures to ensure real and effective compensation or reparation, as they consider to be appropriate, for any harm caused to a worker by any breach of the obligations under this Directive, in a way which is dissuasive and proportionate to the damage suffered.*

**Amendment 21**

**Proposal for a directive – amending act  
Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

*(19a) Victims of discrimination should have adequate means of legal protection. To provide more effective protection, it should be possible for associations, organisations and other legal entities to engage in proceedings, as Member States consider to be appropriate, on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.*

## Amendment 22

### Proposal for a directive – amending act Recital 20

#### *Text proposed by the Commission*

(20) This Directive lays down minimum requirements and thus offers the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation prevailing in each Member State.

#### *Amendment*

(20) This Directive lays down minimum requirements and thus offers the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation prevailing in each Member State, ***in particular national laws which, by combining parental leave and maternity leave, provide for an entitlement to the mother of at least 18 weeks of leave allocated before and/or after confinement, and remunerated at least at the level provided for in this Directive.***

***Member States that have not already done so are strongly encouraged to take the appropriate measures to ensure equal treatment of pregnant workers and workers who have recently given birth or are breastfeeding, in the public and private sectors, as well as for workers who do not fall within the definitions contained in Article 2 of Directive 92/85/EEC, so as to maximise the benefits of higher fertility rates and higher women's employment. To that end tax incentives for employers should be considered.***

#### *Justification*

*On page eight of its Explanatory Memorandum to the proposal for a Directive of the European Parliament and of the Council of 3 October 2008, the Commission states that 'National laws which provide for an entitlement to the mother of at least 18 weeks of leave allocated before and/or after confinement, and remunerated at least at the level provided for in this Directive, should be deemed to be maternity leave for the purposes of this Directive.' This amendment clarifies that intention in a relevant recital.*

## Amendment 23

### Proposal for a directive – amending act

#### Article 1 – point -1 (new)

Directive 92/85/EEC

Recital 14

*Text proposed by the Commission*

*Amendment*

***-1. Recital 15 is replaced by the following:***

**“Whereas the vulnerability of pregnant workers, workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least 20 continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least 8 weeks allocated after confinement;”**

#### *Justification*

*Il est nécessaire de prévoir une durée de congé maternité suffisamment longue pour permettre aux femmes qui le désirent de pouvoir allaiter leur enfant dans de bonnes conditions. A cet égard, notons que l’Organisation Mondiale de la Santé recommande un allaitement exclusif pendant les six premiers mois de la vie de l’enfant (A55/15).*

*Vingt semaines sont favorables pour aider les femmes à se remettre de l'accouchement, à encourager l'allaitement maternel et d'aider à créer une relation solide avec l'enfant. Un délai plus long pourrait affecter le retour des femmes au marché du travail.*

*Le congé minimal post-natal doit également être élevé, afin d’encourager les femmes à allaiter le plus longtemps possible.*

## Amendment 24

### Proposal for a directive – amending act

#### Article 1 – point -1 a (new)

Directive 92/85/EEC

Recital 17

*Text proposed by the Commission*

*Amendment*

***-1a. Recital 18 is replaced by the following:***

**“Whereas, moreover, provision concerning maternity leave would also**



**serve no purpose unless accompanied by the maintenance of *all* rights linked to the employment contract, including maintenance of full pay and [...] entitlement to an equivalent allowance;”**

*Justification*

*Entitlements must be based on full pay so as to prevent women losing out financially because they are mothers.*

**Amendment 25**

**Proposal for a directive – amending act**

**Article 1 – point -1 b (new)**

Directive 92/85/EEC

Article 1 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***-1b. In Article 1 the following paragraph 1a is inserted:***

***“1a. This Directive also aims to improve the conditions for pregnant workers and workers who have recently given birth to remain in, or return to, the labour market and to ensure better reconciliation of professional, private and family life.”***

*Justification*

*Given the addition of Article 141 of the EC Treaty to the legal basis of this proposal, the additional point aims at widening the scope of the directive and allows for including issues such as flexible working arrangements and paternity leave.*

**Amendment 26**

**Proposal for a directive – amending act**

**Article 1 – point -1 c (new)**

Directive 92/85/EEC

Article 2

*Text proposed by the Commission*

*Amendment*

***-1c. Article 2 is replaced by the following:***

***“Article 2***

***Definitions***

**For the purposes of this Directive:**

**(a) pregnant worker shall mean a pregnant worker *employed under any type of contract, including in domestic work*, who informs her employer of her condition, in accordance with national legislation and/or national practice;**

**(b) worker who has recently given birth shall mean a worker employed *under any type of contract, including in domestic work*, who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;**

**(c) worker who is breastfeeding shall mean a worker *employed under any type of contract, including in domestic work*, who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;”**

## **Amendment 27**

**Proposal for a directive – amending act**

**Article 1 – point -1 d (new)**

Directive 92/85/EEC

Article 3

*Text proposed by the Commission*

*Amendment*

***-1d. Article 3 is replaced by the following:***

**“Article 3**

**Guidelines**

**1. In consultation with the Member States and assisted by the Advisory Committee on Safety, Hygiene and Health Protection at Work, the Commission shall draw up guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous *for the***

*reproductive health of male and female workers and for the safety or health of workers within the meaning of Article 2. These guidelines shall be reviewed and shall, from 2012, be updated at least every five years.*

**The guidelines referred to in the first subparagraph shall also cover movements and postures, mental and physical fatigue and other types of physical and mental stress connected with the work done by workers within the meaning of Article 2.**

**2. The purpose of the guidelines referred to in paragraph 1 is to serve as a basis for the assessment referred to in Article 4(1).**

**To this end, Member States shall bring these guidelines to the attention of all employers and all *male and female workers and/or their representatives and the social partners* in the respective Member State.”**

#### *Justification*

*It is important to keep the guidelines up to date with recent developments and knowledge. Furthermore, health and safety risks exist for both men and women, and should be taken into account more generally, as they are important even before the moment of conception.*

#### **Amendment 28**

##### **Proposal for a directive – amending act**

##### **Article 1 – point -1 e (new)**

Directive 92/85/EEC

Article 4

*Text proposed by the Commission*

*Amendment*

***-1e. Article 4 is replaced by the following:***

**“Article 4**

**Assessment, information and consultation**

***1. In the risk assessment carried out under Directive 89/391/EEC the employer***

*shall include an assessment of the reproductive risks for male and female workers.*

**2. For all activities liable to involve a specific risk of exposure to the agents, processes or working conditions of which a non-exhaustive list is given in Annex I, the employer shall assess the nature, degree and duration of exposure, in the undertaking and/or establishment concerned, of workers within the meaning of Article 2 *and workers likely to be in one of the situations referred to in Article 2*, either directly or by way of the protective and preventive services referred to in Article 7 of Directive 89/391/EEC, in order to:**

- assess any risks to the safety or health and any possible effect on the pregnancy or breastfeeding of workers within the meaning of Article 2 *and workers likely to be in one of the situations referred to in Article 2*,**

- decide what measures should be taken.**

**3. Without prejudice to Article 10 of Directive 89/391/EEC, workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2 in the undertaking and/or establishment concerned and/or their representatives *and the relevant social partners* shall be informed of the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work.**

**4. *Appropriate measures shall be taken to ensure that workers and/or their representatives in the undertaking or establishment concerned may monitor the application of this Directive or may be involved in its application, in particular with regard to the measures determined by the employer which are referred to in paragraph 2, without prejudice to the employer's responsibility for determining***

*those measures.*

***5. Consultation and participation of workers and/or their representatives in connection with matters covered by this Directive shall take place in accordance with Article 11 of Directive 89/391/EEC.”***

#### *Justification*

*It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.*

#### **Amendment 29**

##### **Proposal for a directive – amending act**

##### **Article 1 – point -1 f (new)**

Directive 92/85/EEC

Article 5

*Text proposed by the Commission*

*Amendment*

***-If. Article 5 is amended as follows:***

***(a) Paragraph 2 is replaced by the following:***

**“2. If the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible [...] the employer shall take the necessary measures to move the worker concerned to another job.”**

***(b) Paragraph 3 is replaced by the following:***

**“3. If moving her to another job is not technically and/or objectively feasible [...] the worker concerned shall be granted leave in accordance with national legislation and/or national practice for the whole of the period necessary to protect her safety or health.”**

## *Justification*

*The current text of paragraphs 2 and 3 gives a far too wide opportunity to employers to argue that they cannot adapt the workplace or offer an alternative job. By deleting the part ‘or cannot reasonably be required on duly substantiated grounds’ the protection of the employment opportunities for women is increased, since less scope remains for the employer to argue that offering such alternatives is not technically or objectively feasible.*

## **Amendment 30**

### **Proposal for a directive – amending act**

#### **Article 1 – point -1 g (new)**

Directive 92/85/EEC

Article 7

*Text proposed by the Commission*

*Amendment*

***-1g. Article 7 is replaced by the following  
“Article 7***

#### ***Night work***

**1. Member States shall take the necessary measures to ensure that workers referred to in Article 2 are not obliged to perform night work [...]:**

***(a) during the ten weeks prior to childbirth;***

***(b) during the remainder of the pregnancy should it be necessary for the health of the mother or the unborn child;***

***(c) during the entire period of breastfeeding.***

**2. The measures referred to in paragraph 1 must entail the possibility, in accordance with national legislation and/or national practice, of:**

***(a) transfer to a compatible daytime working timetable; or***

***(b) leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible [...].***

***3. Workers wishing to be exempted from night work shall, in accordance with rules laid down by the Member States, inform***

*their employer and, in the case referred to in paragraph 1 (b), submit a medical certificate to the employer.*

*4. For single parents and parents with children with severe disabilities, the periods referred to in paragraph 1 may be extended in accordance with the procedures laid down by the Member States.*

*5. Member States shall take the necessary measures to ensure that fathers of children younger than 12 months are not obliged to perform night work.”*

## **Amendment 31**

### **Proposal for a directive – amending act**

#### **Article 1 – point -1 h (new)**

Directive 92/85/EEC

Article 7 a (new)

#### *Amendment*

*- 1h. The following Article 7a is inserted:*

*“Article 7a*

#### *Overtime*

*1. Pregnant workers and working women with a child aged under 12 months shall not be obliged to work overtime.*

*2. A worker who is breastfeeding her child shall not be obliged to work overtime while she is breastfeeding, where necessary in the interests of her health and that of her child.”*

#### *Justification*

*To enable them to spend more time with their young children, women should be entitled to favourable treatment where overtime is concerned; a new provision should be added to allow a worker to refuse to work overtime if her child is under 12 months old.*

## Amendment 32

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least **18 weeks** allocated before and/or after confinement.

#### *Amendment*

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least **20 weeks** allocated before and/or after confinement.

#### *Justification*

*Maternity leave must be long enough to enable those women who so wish to breastfeed in comfort. The World Health Organisation recommends that breastfeeding should be the only feeding method used in the first six months of a child's life (A55/15).*

*Twenty weeks' leave would be appropriate to the extent that it would give women time to recover from their confinement, encourage breastfeeding, and enable a mother to forge a strong bond with her child. A longer period might diminish women's prospects of returning to the labour market.*

## Amendment 33

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2

#### *Text proposed by the Commission*

2. The maternity leave stipulated in paragraph 1 shall include compulsory leave of at least six weeks after childbirth. The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth.

#### *Amendment*

2. The maternity leave stipulated in paragraph 1 shall include compulsory **fully paid maternity** leave of at least six weeks after childbirth. **Member States may extend the compulsory period of maternity leave to a maximum of six weeks before confinement.** The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after



childbirth. *The six week period of compulsory maternity leave shall apply to all working women regardless of the number of days worked prior to confinement.*

#### **Amendment 34**

##### **Proposal for a directive – amending act**

##### **Article 1 -point 1**

Directive 92/85/EEC

Article 8 – paragraph 2a (new)

*Text proposed by the Commission*

*Amendment*

*2a. This period may, if the couple agrees and so requests, be shared with the father, in accordance with the legislation of the Member State concerned.*

#### **Amendment 35**

##### **Proposal for a directive – amending act**

##### **Article 1 — point 1**

Directive 92/85/EEC

Article 8 — paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

*2b To protect the health of both mother and child, the Member States shall take the necessary measures to ensure that workers can decide freely and without compulsion whether or not to take the non-compulsory period of maternity leave before the childbirth.*

#### **Amendment 36**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 1**

Directive 92/85/EEC

Article 8 – paragraph 2 c (new)

*Text proposed by the Commission*

*Amendment*

***2c. For multiple births the compulsory period of maternity leave referred to in paragraph 2 shall be increased by one month for each additional child.***

## **Amendment 37**

### **Proposal for a directive – amending act**

#### **Article 1 — Point 1**

Directive 92/85/EEC

Article 8 — paragraph 2 d (new)

*Text proposed by the Commission*

*Amendment*

***2d The worker must indicate her chosen period of maternity leave at last two months before the date of commencement of such leave.***

### *Justification*

*Introduction of an obligation on notification of the maternity leave period provides planning certainty for enterprises. Otherwise they, particularly SMEs, would face considerable organisational difficulties.*

## **Amendment 38**

### **Proposal for a directive – amending act**

#### **Article 1 – point 1**

Directive 92/85/EEC

Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. Member States shall take the necessary measures to ensure that additional leave is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities **and** multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated.

4. Member States shall take the necessary measures to ensure that **fully paid** additional **maternity** leave is granted **in specific situations such as** in the case of premature childbirth, **stillbirth, caesarean section**, children hospitalised at birth, children with disabilities, **mothers with disabilities, teenage mothers**, multiple births **or births occurring within 18 months of the previous birth**. The duration

of the additional **maternity** leave **after confinement** should be proportionate and allow the special needs of the mother and the child/children to be accommodated. **Member States shall also provide for a 12-week period of fully paid leave in the case of stillbirth.**

## Amendment 39

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5

#### *Text proposed by the Commission*

5. Member States shall ensure that **any period of sick leave** due to illness or complications arising out of pregnancy **occurring four weeks or more before confinement does** not impact on the duration of maternity leave.”

#### *Amendment*

5. Member States shall ensure that **absences from work** due to illness or complications arising out of pregnancy **or attested postnatal depression do** not impact on the duration of maternity leave.

#### *Justification*

*The rapporteur maintains that when illness and complications arising out of pregnancy are such as to necessitate sick leave – however long or short – the duration of maternity leave should not be affected. It is vital to ensure that working women suffer no discrimination on account of their pregnancy and that they continue to enjoy the same entitlements as other workers.*

## Amendment 40

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**5a. Member States shall guarantee mothers’ and fathers’ rights by ensuring special working conditions so as to help children with disabilities.**

## **Amendment 41**

### **Proposal for a directive – amending act**

#### **Article 1 – point 1**

Directive 92/85/EEC

Article 8 – point 5 b (new)

*Text proposed by the Commission*

*Amendment*

***5b. This Directive also applies to self-employed workers, and Member States shall make the necessary adjustments to their respective laws in order to guarantee equal employment rights, as regards maternity leave.***

*Justification*

*Self-employed workers should not be treated differently from nor enjoy fewer rights than employees.*

## **Amendment 42**

### **Proposal for a directive – amending act**

#### **Article 1 – point 1**

Directive 92/85/EEC

Article 8 – paragraph 5c (new)

*Text proposed by the Commission*

*Amendment*

***5c. Member States shall adopt suitable measures for the recognition of postnatal depression as a serious illness, and shall support awareness campaigns aimed at disseminating accurate information on this illness and correcting the prejudices and possible stigmatisation which it can still attract.***

*Justification*

*The aim of this amendment is to raise Member States' awareness of the need for official recognition of postnatal depression as an illness, given that it affects 10-15% of women and has significant repercussions for work and family life.*

## **Amendment 43**

### **Proposal for a directive – amending act**

#### **Article 1 – point -1 a (new)**

Directive 92/85/EEC

Article 8 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The following Article 8a is inserted:***

***"Article 8a***

***Paternity/Co-maternity leave***

***1. Member States shall take the necessary measures to ensure that workers whose life-partner has recently given birth are entitled to a continuous period of non-transferable fully paid paternity/co-maternity leave of at least two compulsory weeks , to be taken after the confinement of the worker's spouse or partner;***

***2. Member States shall take the necessary measures to ensure that workers whose life-partner has recently given birth are granted a period of special leave including the unused portion of maternity leave in the case of death or physical incapacity of the mother."***

## **Amendment 44**

### **Proposal for a directive – amending act**

#### **Article 1 – point 1 b (new)**

Directive 92/85/EEC

Article 8 b (new)

*Text proposed by the Commission*

*Amendment*

***1b. The following Article 8b is inserted:***

***"Article 8b***

***Adoption leave***

***Member States shall take the necessary measures to ensure that the provisions of this Directive concerning maternity and paternity leave also apply in the event of***

*adoption.”*

## Amendment 45

### Proposal for a directive – amending act

#### Article 1 – point 2

Directive 92/85/EEC

Article 10 – point 1

#### *Text proposed by the Commission*

1. The Member States shall take the necessary measures to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy to the end of the maternity leave provided for in Article 8(1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

#### *Amendment*

1. The Member States shall take the necessary measures to ***ensure that employers cannot, for reasons of their own convenience, interrupt maternity or paternity leave or leave to care for a child, and*** to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy to ***at least six months following*** the end of the maternity leave provided for in Article 8(1). ***Dismissal during that period shall be presumed to have arisen on grounds of discrimination and shall be duly specified in writing,*** save in exceptional cases not connected with their condition, which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

## Amendment 46

### Proposal for a directive – amending act

#### Article 1 – point 2

Directive 92/85/EEC

Article 10 – point 1 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***1a. Member States shall take appropriate measures to ensure the safety and health of pregnant workers, with regard to ergonomic conditions, working time (including night work and change of job), work intensity, and increasing protection***

***against specific infectious agents and ionising radiation.***

*Justification*

*Protecting the health and safety of pregnant workers should be a major concern of this directive.*

**Amendment 47**

**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 92/85/EEC

Article 10 – paragraph 2

*Text proposed by the Commission*

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing. If the dismissal occurs within **six** months following the end of maternity leave as provided for in Article 8(1), ***the employer must cite duly substantiated grounds for her dismissal in writing at the request of the worker concerned.***

*Amendment*

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing. If the dismissal occurs within **12** months following the end of maternity leave as provided for in Article 8(1), ***it shall be presumed to have arisen on grounds of discrimination, save in an exceptional case not connected with her condition, and duly specified in writing, which is permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.***

**Amendment 48**

**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 92/85/EEC

Article 10 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Member States shall take the necessary measures to prohibit discrimination against pregnant women in the labour market by creating equal opportunities in recruitment, should they***

*meet all the requirements for the applicable position.*

*Justification*

*The Member States should guarantee the equal access to the labour market for pregnant women, so that the pregnancy does not jeopardise the career and chances for professional development of women only because hiring a pregnant worker presents an additional burden to the employer.*

**Amendment 49**

**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 92/85/EEC

Article 10 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall take the necessary measures to ensure that during paternity /co-maternity leave, workers enjoy the same protection from dismissal afforded in Article 1 to workers within the meaning of Article 2.***

**Amendment 50**

**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 92/85/EEC

Article 10 – point 4 b (new)

*Text proposed by the Commission*

*Amendment*

***4b. Member States shall be encouraged to adopt measures that ensure that a worker may choose to work part-time for a period of no longer than one year, with full protection from the possibility of dismissal and full rights to recover their full time position and pay at the end of this period.***

*Justification*

*This measure can contribute to a more successful reconciliation of private, family and professional life, by allowing the worker to adapt better and more smoothly to her new*



*situation.*

## **Amendment 51**

**Proposal for a directive – amending act**

**Article 1 – point 3 – subpoint -a (new)**

Directive 92/85/EEC

Article 11 – point 1

*Text proposed by the Commission*

*Amendment*

**(-a) Point 1 is replaced by the following:**

**“1. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an *equivalent* allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;”**

*Justification*

*Entitlements should be based on full pay, to prevent women losing out financially because they are mothers.*

## **Amendment 52**

**Proposal for a directive – amending act**

**Article 1 – point 3 – subpoint a a (new)**

Directive 92/85/EEC

Article 11 – point 2 – subpoint b

*Text proposed by the Commission*

*Amendment*

**(aa) In point 2, subpoint (b) is replaced by the following:**

**“(b) maintenance of a payment to, and/or entitlement to an *equivalent* allowance for, workers within the meaning of Article 2;”**

*Justification*

*Entitlements should be based on full pay, to prevent women losing out financially because*

*they are mothers.*

## **Amendment 53**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3 – subpoint a b (new)**

Directive 92/85/EEC

Article 11 – point 2 – subpoint b a (new)

*Text proposed by the Commission*

*Amendment*

***(ab) In point 2, the following subpoint (ba) is inserted:***

***“(ba) the right of workers on maternity leave to receive automatically any increase of salary, if applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase.”***

*Justification*

*If there is a wage increase for the position of workers on maternity leave, it should come into force automatically for them, so they will not have to interrupt their maternity leave just to get the higher salary and after that resume the leave. The administrative work of the employer in that respect will also be reduced and simplified.*

## **Amendment 54**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3 - subpoint b**

Directive 92/85/EEC

Article 11 – point 2 – subpoint c

*Text proposed by the Commission*

*Amendment*

c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence;

c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them, ***with the same pay, professional category and duties as they enjoyed prior to the period of maternity leave***, and to benefit from any improvement in working conditions to which they would have been entitled during their absence; ***in exceptional situations relating to the restructuring or***

***substantial reorganisation of the production process, steps shall always be taken to ensure that the worker can discuss with her employer the impact of such changes on her work situation and, indirectly, her personal situation;***

*Justification*

*A post considered "equivalent" must offer the same pay, professional category and duties as before.*

*This point is important because, should special circumstances arise (e.g. financial crises) which may be harmful to the situation of women on maternity leave and cause them to lose their entitlements, their position at work may be threatened unless they examine with the employer the implications of restructuring measures.*

**Amendment 55**

**Proposal for a directive – amending act**

**Article 1 – point 3 – subpoint b a (new)**

Directive 92/85/EEC

Article 11 – point 2 – subpoint c a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) In point 2, following subpoint (ca) is added:***

***"(ca) the maintenance for workers within the meaning of Article 2 of opportunities for career development through education along with ongoing professional and additional training with a view to consolidating their career prospects;"***

*Justification*

*This is to ensure that the fact that women are mothers does not adversely affect their career prospects. Employers should, in consultation with the workers concerned, take the necessary education and training measures to ensure that the workers' career prospects are maintained.*

## Amendment 56

### Proposal for a directive – amending act

#### Article 1 – point 3 – subpoint b b (new)

Directive 92/85/EEC

Article 11 – point 2 – subpoint c b (new)

*Text proposed by the Commission*

*Amendment*

***(bb) In point 2, the following subpoint (cb) is added:***

***(cb) a period of maternity leave must not be prejudicial to the worker's pension rights and must be counted as a period of employment for pension purposes, and workers must not suffer any reduction of pension rights through taking maternity leave.***

*Justification*

*It is important to ensure that allowances paid to workers during maternity leave do not adversely affect their pension entitlements. Member States should prevent this from happening and provide compensation for any loss of pension rights.*

## Amendment 57

### Proposal for a directive – amending act

#### Article 1 – point 3 – subpoint c

Directive 92/85/EEC

Article 11 – point 3

*Text proposed by the Commission*

*Amendment*

3. the allowance referred to in point 2(b) shall be deemed ***adequate*** if it guarantees income equivalent to the last monthly salary or an average monthly salary, subject to any ceiling laid down under national legislation. ***Such a ceiling may not be lower than the allowance received by workers within the meaning of Article 2 in the event of a break in activity on grounds connected with the worker's state of health.*** The Member States may lay down the period over which this average monthly salary is calculated.

3. the allowance referred to in point 2(b) shall be deemed ***equivalent*** if it guarantees income equivalent to the last monthly salary or an average monthly salary. ***When making the calculation, any salary increases resulting from legislation or contractual provisions must be included. The allowance must be 100% of the last monthly salary or the average monthly salary during the compulsory period of leave and not be lower than 85% of the last monthly salary or the average monthly salary during the remaining period of leave of the worker concerned.***

The Member States may lay down the period over which this average monthly salary is calculated.

## **Amendment 58**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3 – subpoint c a (new)**

Directive 92/85/EEC

Article 11 – point 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) The following point 3a. is inserted:***

***3a. the allowance received by workers within the meaning of Article 2 may in any case not be lower than the allowance received by workers within the meaning of Article 2 in the event of a break in activity on grounds connected with the worker's state of health.***

*Justification*

*Stating that the allowance cannot be lower than health allowance ensures that the directive takes into consideration those mothers who have very low salaries, as is particularly the case in new Member States.*

## **Amendment 59**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3 – subpoint c b (new)**

Directive 92/85/EEC

Article 11 – point 4

*Text proposed by the Commission*

*Amendment*

***(cb) Article 11(4) is repealed.***

*Justification*

*It is essential to remove the eligibility criterion of Article 11(4) of Directive 92/85/EEC if all women are to have the same right to paid maternity leave, in such a way as to comply with worker mobility and the EU's common principles of "flexicurity".*

*It makes no sense for the Commission proposal to recognise the right to maternity leave yet permit women to leave their jobs and lose their income if they do not meet the conditions for*

*paid maternity leave under national law.*

## **Amendment 60**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3 – subpoint d**

Directive 92/85/EEC

Article 11 – point 5

#### *Text proposed by the Commission*

5. Member States shall take the measures necessary to ensure that workers, within the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers" and workers" needs into account.

#### *Amendment*

5. Member States shall take the measures necessary to ensure that workers, within the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests *seriously*, taking employers" and workers" needs into account, *in order to improve the balance between work and private and family life. Employers shall, where refusing such requests, provide objective reasons and may only refuse such requests where the disadvantages for the employer in organisational terms are disproportionately greater than the benefits for the worker.*

## **Amendment 61**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3 – subpoint d a (new)**

Directive 92/85/EEC

Article 11 – point 5 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

*(da) The following point 5a is inserted:*

*"5a. Member States shall take the necessary measures to encourage employers and to promote dialogue between the social partners to provide for reintegration and training support for workers returning to work after maternity leave, where necessary and/or where*

*requested by the worker."*

## **Amendment 62**

**Proposal for a directive – amending act**

**Article 1 – point 3 -subpoint d b (new)**

Directive 92/85/EEC

Article 11 – point 5 b (new)

*Text proposed by the Commission*

*Amendment*

*(db). The following point 5b is inserted:*

*"5b. The employer shall ensure that the working time of pregnant workers takes account of the need for regular and extraordinary medical check-ups."*

*Justification*

*The medical check-ups are obligatory for pregnant women and extremely important for the normal development of the foetus, therefore, the employer must take that into consideration and ensure flexibility in the working hours of the pregnant workers.*

## **Amendment 63**

**Proposal for a directive – amending act**

**Article 1 – point 3 -subpoint d c (new)**

Directive 92/85/EEC

Article 11 – point 5 c (new)

*Text proposed by the Commission*

*Amendment*

*(dc) The following paragraph 5c is inserted:*

*"5c. Member States shall encourage employers to set up childcare facilities for children of employees that are younger than three years old."*

*Justification*

*The lack of childcare facilities is an undeniable reality in the EU. This provision is essential for preventing women from giving up employment because of having small children to take care of.*

## **Amendment 64**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3 a (new)**

Directive 92/85/EEC

Article 11 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The following Article 11a is inserted:**

**“Article 11a**

***Breastfeeding or nursing leave***

***1. A mother who is breastfeeding her child shall be entitled to a period of leave for that purpose, that shall be taken in two separate periods, each of which shall be of one hour, unless another arrangement has been agreed with the employer, without losing any privileges connected to her employment.***

***2. In the case of multiple births, the leave referred to in paragraph 1 shall be increased by 30 minutes for each additional child.***

***3. . In the case of part-time work, the leave referred to in paragraph 1 shall be reduced in proportion to the normal working hours, but may not be less than 30 minutes.***

***4. In the case referred to in paragraph 3, the leave shall be taken for a period not exceeding one hour and, where applicable, for a second period to cover the remaining duration, unless another arrangement has been agreed with the employer”.***

## **Amendment 65**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3 b (new)**

Directive 92/85/EEC

Article 11b (new)



**3b. The following Article 11b is inserted:**

**"Article 11b**

***Prevention of discrimination***

***Member States shall encourage employers through collective agreements or practice, to take effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave.***

***Gender mainstreaming***

***Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive."***

## **Amendment 66**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 92/85/EEC

Article 12 a

***(1) Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that when persons who consider that their rights under this Directive have been breached establish, before a court or other competent authority, facts from which it may be presumed that there has been such a breach, it shall be for the respondent to prove that there has been no breach of the Directive.***

***(2) Paragraph 1 shall not prevent the***

***deleted***

*Member States from introducing rules of evidence which are more favourable to plaintiffs.*

*(3) Paragraph 1 shall not apply to criminal proceedings.*

*(4) Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.*

*(5) Paragraphs 1 to 4 shall also apply to any legal proceedings commenced according to Article 12.*

#### *Justification*

*Discrimination on grounds of pregnancy already fulfils the criteria for sex discrimination. The existing reversal of the burden of proof enshrined in Directive 2006/54/EEC can also be brought to bear.*

#### **Amendment 67**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 4 a (new)**

Directive 92/85/EEC

Article 12 a a (new)

*Text proposed by the Commission*

*Amendment*

***4a. The following Article 12aa is inserted:***

***"Article 12aa***

***Prevention of discrimination***

***Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners at relevant levels with a view to putting in place effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave."***

#### **Amendment 68**

**Proposal for a directive – amending act**

**Article 1 – point 6**

Directive 92/85/EEC

Article 12 c

*Text proposed by the Commission*

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied.

***Penalties may comprise payment of compensation, which may not be limited by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive.***

*Amendment*

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied.

**Amendment 69**

**Proposal for a directive – amending act**

**Article 1 – point 7**

Directive 92/85/EEC

Article 12d

*Text proposed by the Commission*

Member States shall ensure that the body or bodies designated under Article 20 of Directive 2002/73/EC as recast by Directive 2006/54/EC for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not to the worker's health and safety.

*Amendment*

Member States shall ensure that the body or bodies designated under Article 20 of Directive 2002/73/EC as recast by Directive 2006/54/EC for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not ***solely*** to the worker's health and safety.

**Amendment 70**

**Proposal for a directive – amending act**  
**Article 2 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States may adopt preventive measures for the protection and safety at work of pregnant workers and mothers of newly-born children.***

*Justification*

*Workplace stress can have an adverse psychological affect on pregnant women and mothers of newly-born infants and can have repercussions for the foetus or infant.*

**Amendment 71**

**Proposal for a directive – amending act**  
**Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The social partners at European level are requested to discuss the framework agreement on parental leave in order to involve both parents in improving the balance between private and working life when they have a child.***

*Justification*

*The proposal amending Directive 92/85/EEC does not specify the measures required to ensure effective use of maternity leave and provide for a clear transition between the end of maternity leave and the return to employment, such as childcare facilities, paternity leave and parental leave.*

**Amendment 72**

**Proposal for a directive – amending act**  
**Article 2 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. It is recommended that the rules arising from this Directive be transcribed in the text of collective and individual work contracts in the Member States.***

## Justification

*Women workers very often do not avail themselves of their rights because they do not know they are protected by the law. If those rights are referred to in their contracts, the nature of the applicable legislation becomes more transparent.*

### Amendment 73

#### Proposal for a directive – amending act Article 4 – paragraph 1

##### *Text proposed by the Commission*

1. Member States and national equality bodies shall communicate to the Commission, by [five years after adoption] at the latest and every **five years** thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of Directive 92/85/EEC as amended by this Directive.

##### *Amendment*

1. Member States and national equality bodies shall communicate to the Commission, by [five years after adoption] at the latest and every **three years** thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of Directive 92/85/EEC as amended by this Directive.

### Amendment 74

#### Proposal for a directive – amending act Article 4 – paragraph 2

##### *Text proposed by the Commission*

2. The Commission's report shall take account, as appropriate, of the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, the report shall *inter alia* provide an assessment of the impact on women and men of the measures taken. In the light of the information received, the report shall, where necessary, include proposals to revise and update Directive 92/85/EEC as amended by this Directive.

##### *Amendment*

2. The Commission's report shall take account, as appropriate, of the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, the report shall *inter alia* provide an assessment of the impact on women and men of the measures taken. ***It shall also include an impact study analysing the social and economic effects, in the EU as a whole, of a further increase in the duration of maternity leave.*** In the light of the information received, the report shall, where necessary, include proposals to revise and update Directive 92/85/EEC as amended by this Directive.

### *Justification*

*The costs and benefits entailed, for both women and society, in substantially longer maternity leave need to be gauged accurately. Facilitating breastfeeding could, among other things, lead to savings in health spending and have a beneficial impact on the environment and household purchasing power.*

## **EXPLANATORY STATEMENT**

### **1. Introduction**

The Commission proposal amending Directive 92/85/EEC is intended to guarantee better safety and health for pregnant workers and those who have recently given birth or are breastfeeding. This legislative initiative, which forms part of the Commission's 'work-life balance package' is one of the measures aimed at promoting gender equality on the labour market.

The revision of Directive 92/85/EEC can be endorsed, although the Commission's proposed reworking of the text falls short of what would be desirable both from the point of view of reducing the inequalities between men and women on the labour market and as regards actively promoting a work-life balance; the main shortcoming lies in the failure to encourage parenting based on shared responsibilities.

The addition of Article 141 of the EC Treaty to the legal basis in the proposal now under consideration – the proposal thus has a combined legal basis consisting of Article 137(2), providing for workers' safety and health to be protected, and Article 141(3) of the TEC, relating to the promotion of equal opportunities for men and women – makes the directive conceptually better balanced. The broader legal basis can, in addition, encompass provisions to protect mothers and fathers, their roles being of paramount social value.

The amendments made by the proposal relate specifically to longer minimum maternity leave, which is increased from 14 to 18 weeks; the principle that the allowance paid to a worker on maternity leave should be equivalent to her full salary; workplace safety and health requirements; and a ban on dismissal.

### **2. Parenting based on shared responsibilities**

One of priorities laid down in the EU's social agenda is the need to promote policies to facilitate a work-life balance, aimed at women and men alike. A better work-life balance is also one of the six priority areas of action set out in the 2006-2010 'Roadmap for equality between women and men'.

The EU is at present facing a demographic challenge arising from low birth rates and the growing proportion of older people. Better provisions to promote a work-life balance are also a way of coping with a dwindling population.

However, gender stereotypes in society are proving to be long lived and consequently denying women access to employment and, above all, good jobs. Women, and not men, are still considered to be those primarily responsible for looking after children and other dependants; quite often they are forced to choose between motherhood and career success. In many cases they are perceived to be 'high-risk' or 'second-rate' workers, or as 'nuisances', given that they are highly likely to become pregnant and make use of their entitlement to maternity leave. It is essential, therefore, that the new leave arrangements should break with, rather than reinforcing, the stereotypes existing in society.

Motherhood and fatherhood are fundamental rights and central to social stability. Directive 92/85/EEC should accordingly be revised for the benefit of working women by protecting the roles of mothers and fathers, not least through measures to encourage men to shoulder family responsibilities.

The involvement of parents in a child's life, right from the start, is vital for the child's healthy physical, emotional, and mental development. That is why Community legislation should also provide specifically for non-transferrable paid paternity leave, to be taken at the same time as maternity leave. Adoption should likewise carry an entitlement to leave, which the two partners in the couple concerned should split between them.

### **3. Duration of maternity leave**

Given that 18 weeks' maternity leave is already granted in many Member States, the four-week increase (from the present 14 weeks to the proposed 18) amounts to a modest change that is unlikely to have a great impact on the Member States' current legislation. The Advisory Committee on Equal Opportunities for Women and Men is recommending that the leave be increased to 24 weeks.

The rapporteur believes that 20 weeks' leave would be appropriate to the extent that it would give women time to recover from their confinement, encourage breastfeeding, and enable a mother to forge a strong bond with her child. A longer period might diminish women's prospects of returning to the labour market.

The minimum post-natal leave should likewise be raised to eight weeks so as to encourage women to breastfeed for as long as possible.

As it happens, the Commission proposal does not contain any provisions on breastfeeding. Bearing in mind WHO recommendation A55/15, which points to the importance of breastfeeding in the first months of life, and Article 10 of ILO Convention No 183, dating back to 2000, which recommends that, to allow time for breastfeeding, a woman should be entitled to one or more breaks a day or to shorter working hours, the rapporteur maintains that working time should be reduced in order to accommodate breastfeeding, without entailing any loss of privileges.

### **4. Pay**

As laid down in the Commission proposal, women on maternity leave should be paid their full salary, that is to say, an amount equivalent to their last monthly salary or the average monthly salary. That provision, however, is not mandatory.

Payment of their full salary to those on leave is a way of ensuring that women will not lose out financially because they have decided to have children. The salary in question should be not less than 80% of the last or average monthly salary. This constitutes an appropriate ceiling protecting families – especially those headed by a single parent – from the risk of poverty and social exclusion.

### **5. No dismissal**

The changes relating to the ban on dismissal and to workers' rights are welcome on the whole.



The same entitlements should extend to fathers on paternity leave.

Under the Commission proposal, a worker may not be dismissed in the time-span from the start of her pregnancy to six months after the end of her maternity leave; the latter period should be increased to a year, given that women will in many cases have to adapt to a new work situation and will need time to do so.

The rapporteur supports the changes made in this area, including the right for a worker to return to the same job or an equivalent post and benefit from any improvements brought about in her absence. On the other hand, she takes the view that safeguards will be required in order to ensure that a post termed 'equivalent' will be essentially the same as the former job, both as regards the salary paid and as regards the duties to be performed.

## **6. Flexible working patterns**

The rapporteur believes it to be important that a worker, once she has come back from maternity leave, should be allowed to ask her employer to change her working hours or form of work. Employers will be required not just to consider such requests, but to approve them when they are justified.

The same right should be applied to fathers so as to encourage women and men to share family responsibilities. The fact that more women than men make use of these provisions creates an imbalance between the sexes, leading to adverse repercussions in terms of women's situation at work and their economic dependence.

The rapporteur considers it essential to add a provision whereby pregnant workers and those who had recently given birth or were breastfeeding, along with fathers on paternity leave, would be entitled to refuse to work overtime.

## **7. Health and safety**

Risk assessment is central to this proposal. However, there are no preventive measures aimed at eliminating such risks as might be posed to reproduction. Employers do not have to take any steps until they have been informed that a worker is pregnant, which normally happens in about the seventh or eighth week. However, the risk of foetal malformation is greatest during the first weeks of gestation.

Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo.

The rapporteur considers this to be a cause of concern and takes the view that pregnant workers and those who have recently given birth or are breastfeeding cannot be dealt with in isolation. It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age.

## **8. Impact study**

The rapporteur believes that the costs and benefits entailed, for both women and society, in substantially longer maternity leave need to be gauged accurately. Facilitating breastfeeding could, among other things, lead to savings in health spending and have a beneficial impact on the environment and household purchasing power.

## **OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS (\*)**

for the Committee on Women's Rights and Gender Equality

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding  
(COM(2008)0637 – C6-0340/2008 – 2008/0193(COD))

Rapporteur: (\*) Jamila Madeira

(\*) Associated committee - Rule 47 of the Rules of Procedure

### **SHORT JUSTIFICATION**

The proposal is based on Articles 137(2) and 141 (3) of the EC Treaty. Although Directive 92/85/EEC is based on Article 118a of the EC Treaty (now Article 137) and is an individual Directive under the framework of the Directive on Health and Safety (Directive 89/391/EEC), Article 141 EC is added to the legal basis of this proposal. Maternity leave is essential for the protection of the health and safety of pregnant workers or workers who have recently given birth. The protection from dismissal or discrimination due to pregnancy or motherhood is instrumental for the protection of women's health and safety, as well as the remuneration of maternity leave. But the rules pertaining to maternity leave, its length, remuneration and the rights and obligations of women taking maternity leave or returning from it are also intrinsically linked to the application of the principle of equal opportunities and equal treatment between women and men as established in Article 141(3). Therefore the legal bases for this proposal are combined.

The Committee on Employment and Social Affairs has, within its areas of responsibility, given special consideration to the following points:

#### **Sharing responsibilities**

It is vitally important that women and men share the responsibility for children from the time of birth and it is also important that men be given an opportunity to take on this responsibility. As there is no provision in this directive for the inclusion of paternity leave, the European Parliament wishes to stress the need for a directive on the subject that can ensure equal

opportunities and the sharing of responsibilities.

Moreover, with a view to ensuring that responsibilities are shared, this proposal for a directive should be considered as a part of the future discussions on the directive on parental leave and the directive on equal treatment of men and women as self-employed workers.

### **Employment rights of pregnant workers**

The Committee on Employment is convinced that the proposed amendment of Directive 92/85/EEC will provide support for the employment rights of pregnant women.

However, we are convinced that, without the amendments proposed below by the Committee on Employment and Social Affairs and the supplementary measures adopted by the social partners at European level, the amended text will not fully contribute to enhancing the compatibility of working, private and family life and helping women to return to employment.

### **Extension of minimum maternity leave, including a compulsory period**

The Commission is proposing to extend the minimum duration of maternity leave from 14 to 18 weeks, including a compulsory period of six weeks' leave following childbirth. The aim is to enable the workers concerned to recover from childbirth.

The impact assessment shows that extending maternity leave and providing for such a compulsory period following the child's birth will not, in itself, have an ideal impact on the position of pregnant women on the labour market. It will need to be combined with other measures, such as effective parental leave or other provisions (e.g. childcare facilities, in accordance with commitments under the Barcelona objectives). Amending Directive 92/85/EEC should therefore be seen merely as a first step in the right direction.

### **Safeguarding career prospects**

The amendments tabled to Directive 92/85/EEC mention that workers have a right, within the meaning of Article 2, to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence (Article 2(3)(b)).

The Committee on Employment and Social Affairs shares this view. However, steps must also be taken to protect workers by ensuring that they receive the education and training they require to safeguard their career prospects.

Such workers remain outside the labour market for 18 weeks, and this may lead to a serious break in their career prospects. An additional effort will need to be made in the field of education and training to ensure that the legitimate career prospects of these workers are not adversely affected.

### **Rights of self-employed workers**

Although the proposal for a directive only protects employees with a view to combating discrimination and ensuring equal opportunities, Member States will need to ensure that self-employed women enjoy the same rights.

## **Role of the social partners**

On 14 December 1995, the social partners at European level (Business Europe (UNICE), the CEEP and the CES) concluded an agreement on parental leave, which was implemented by Council Directive 96/34/EC of 3 June 1996. This directive lays down minimum rules governing parental leave, as an important means of reconciling working life with family life and promoting equal opportunities and treatment for men and women.

As the proposed amendments to Directive 92/85/EEC mention the right of workers to return to work (Article 2(2), (3), (4) and (5)), special consideration should also be given to the circumstances under which workers can in practice return to work. This is linked, for example, to the need to ensure effective childcare so that workers can in fact return to work.

## **AMENDMENTS**

The Committee on Employment and Social Affairs calls on the Committee on Women's Rights and Gender Equality, as the committee responsible, to incorporate the following amendments in its report:

### **Amendment 1**

#### **Proposal for a directive – amending act Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC<sup>1</sup> lays down minimum requirements to help working parents reconcile their work and parental responsibilities.***

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<sup>1</sup> OJ L 145, 19.6.1996, p. 4.

#### *Justification*

*Council Directive 96/34/EC is a framework agreement between BusinessEurope (UNICE), CEEP and the ETUC on parental leave and is an important addendum to the proposal amending Directive 92/85/EEC as it lays down minimum requirements to help working parents reconcile their work and parental responsibilities.*

## **Amendment 2**

### **Proposal for a directive – amending act Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

***(6b) The objectives set out in the Presidency Conclusions of the Barcelona European Council of 15 and 16 March 2002 stated that Member States should remove obstacles to women's involvement in the labour market and provide by 2010 childcare facilities for at least 90% of children between the age of three and the compulsory schooling age and for at least 33% of children under the age of three, and that such children should have equal access to such facilities in towns and rural areas.***

#### *Justification*

*At its March 2002 meeting in Barcelona, the European Council concluded that Member States should remove obstacles to women's involvement on the labour market and make provision by 2010 for childcare facilities for at least 90% of children between the age of three and the compulsory schooling age and for at least 33% of children under the age of three, and that such children should have equal access to such facilities in towns and rural areas.*

## **Amendment 3**

### **Proposal for a directive – amending act Recital 6 c (new)**

*Text proposed by the Commission*

*Amendment*

***(6c) The Commission communication of 4 July 2006 entitled 'Towards an EU Strategy on the Rights of the Child' states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals.***

### *Justification*

*The communication states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals. With reference to this directive, this means ensuring that all children may be breastfed and receive appropriate care in accordance with their needs as regards development and access to adequate quality care.*

### **Amendment 4**

#### **Proposal for a directive – amending act Recital 6 d (new)**

*Text proposed by the Commission*

*Amendment*

***(6d) The World Health Organisation recommendation of 16 April 2002 on a global strategy on infant and young child feeding states that exclusive breastfeeding during the first six months of a child's life guarantees optimum growth and development.***

### *Justification*

*According to the WHO, exclusive breastfeeding during the first six months of a child's life guarantees optimum growth and development.*

### **Amendment 5**

#### **Proposal for a directive – amending act Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8a) Maternity leave under this Directive should not conflict with Member States' other rules on parental leave and there is no intention to circumvent those models. Maternity leave and parental leave are complementary and when used in combination can promote a better balance between work and family life.***

### *Justification*

*In its explanatory memorandum the Commission draws an artificial distinction between*

*maternity leave and parental leave. Both models complement each other, and using them in combination can promote a better balance between work and family life.*

## **Amendment 6**

### **Proposal for a directive – amending act Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) A post termed ‘equivalent’ pursuant to Article 11(2)(c) should mean that such a post is essentially the same as the former job, as regards both the salary paid and the duties to be performed.***

## **Amendment 7**

### **Proposal for a directive – amending act Recital 13**

*Text proposed by the Commission*

*Amendment*

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection.

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection, ***in order to safeguard their rights to decent working conditions and a better balance between family life and work.***

## **Amendment 8**

### **Proposal for a directive – amending act Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) In the context of the European Union's ageing population and the Commission communication of 12 October 2006 entitled 'The demographic future of Europe – from challenge to opportunity', every effort will need to be made to ensure the effective protection of motherhood.***



### *Justification*

*In view of demographic changes and the importance of having more children, the necessary steps must be taken to ensure effective maternal leave.*

### **Amendment 9**

#### **Proposal for a directive – amending act Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

*(18a) Member States should introduce into their national legal systems measures to ensure real and effective compensation or reparation, as they consider to be appropriate, for any harm caused to a worker by any breach of the obligations under this Directive, in a way which is dissuasive and proportionate to the damage suffered.*

### **Amendment 10**

#### **Proposal for a directive – amending act Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

*(19a) Victims of discrimination should have adequate means of legal protection. To provide more effective protection, it should be possible for associations, organisations and other legal entities to engage in proceedings, as Member States consider to be appropriate, on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.*

### **Amendment 11**

**Proposal for a directive – amending act**

**Article 1 – point -1 (new)**

Directive 92/85/EEC

Article 1 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**-1. In Article 1, the following point is inserted:**

**"1a. This Directive also aims to improve the work-related conditions for pregnant workers and workers who have recently given birth, who remain or return to the labour market, and to achieve a better reconciliation of professional, private and family life."**

*Justification*

*The additional subparagraph aims at widening the scope of the Directive and allows for including issues such as flexible working arrangements, paternity leave, etc.*

**Amendment 12**

**Proposal for a directive – amending act**

**Article 1 – point -1 a (new)**

Directive 92/85/EEC

Article 2 – point a

*Text proposed by the Commission*

*Amendment*

**-1a. In Article 2, point a is replaced by the following:**

**"(a) pregnant worker shall mean a pregnant worker, including a domestic worker, who informs her employer of her condition, in accordance with national legislation and/or national practice;"**

*Justification*

*The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.*

**Amendment 13**

**Proposal for a directive – amending act**

**Article 1 – point -1 b (new)**

Directive 92/85/EEC

Article 2 – point b

*Text proposed by the Commission*

*Amendment*

***-1b. In Article 2, point b is replaced by the following:***

**"(b) worker who has recently given birth shall mean a worker, *including a domestic worker*, who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;"**

*Justification*

*The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.*

**Amendment 14**

**Proposal for a directive – amending act**

**Article 1 – point -1 c (new)**

Directive 92/85/EEC

Article 2 – point c

*Text proposed by the Commission*

*Amendment*

***-1c. In Article 2, point c is replaced by the following:***

**"(c) worker who is breastfeeding shall mean a worker, *including a domestic worker*, who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice."**

*Justification*

*The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.*

## **Amendment 15**

### **Proposal for a directive – amending act**

#### **Article 1 – point -1 d (new)**

Directive 92/85/EEC

Article 3 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***-1d. In Article 3(1), the following subparagraph is added:***

***"The guidelines referred to in the first subparagraph shall be regularly evaluated with a view to their revision, at least once every five years, starting in 2012."***

*Justification*

*Explanation: it is important to keep the guidelines up to date with recent developments and knowledge.*

## **Amendment 16**

### **Proposal for a directive – amending act**

#### **Article 1 – point -1 e (new)**

Directive 92/85/EEC

Article 4 – title

*Text proposed by the Commission*

*Amendment*

***-1e. In Article 4 the title is replaced by the following:***

***"Assessment, information and consultation"***

*Justification*

*Reproductive risks exist for both men and women, and should be taken into account more generally as they are important even before the moment of conception.*

## **Amendment 17**

### **Proposal for a directive – amending act**

#### **Article 1 – point -1 f (new)**

Directive 92/85/EEC

Article 4 – paragraph -1 (new)

*Text proposed by the Commission*

*Amendment*

***-If. In Article 4, the following paragraph is inserted:***

***"-1. In the risk assessment carried out under Directive 89/391/EEC, the employer shall include reproductive risks for male and female workers."***

*Justification*

*Reproductive risks exist for both men and women, and should be taken into account more generally as they are important even before the moment of conception.*

## **Amendment 18**

**Proposal for a directive – amending act**

**Article 1 – point -1 g (new)**

Directive 92/85/EEC

Article 4 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***-1g. In Article 4(1), the introductory part is replaced by the following:***

***"1. For all activities liable to involve a specific risk of exposure to the agents, processes or working conditions of which a non-exhaustive list is given in Annex I, the employer shall assess the nature, degree and duration of exposure, in the undertaking and/or establishment concerned, of workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2, either directly or by way of the protective and preventive services referred to in Article 7 of Directive 89/391/EEC, in order to:"***

*Justification*

*Reproductive risks exist for both men and women, and should be taken into account more generally as they are important even before the moment of conception.*

## **Amendment 19**

**Proposal for a directive – amending act**

**Article 1 – point -1 h (new)**

Directive 92/85/EEC

Article 4 – paragraph 1 – indent 1

*Text proposed by the Commission*

*Amendment*

***-1h. In Article 4(1), the first indent is replaced by the following:***

***"- assess any risks to the safety or health and any possible effect on the pregnancies or breastfeeding of workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2,"***

*Justification*

*Reproductive risks exist for both men and women, and should be taken into account more generally as they are important even before the moment of conception.*

**Amendment 20**

**Proposal for a directive – amending act**

**Article 1 – point -1 i (new)**

Directive 92/85/EEC

Article 4 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***-1i. In Article 4, paragraph 2 is replaced by the following:***

***"2. Without prejudice to Article 10 of Directive 89/391/EEC, workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2 in the undertaking and/or establishment concerned and/or their representatives and the relevant social partners shall be informed of the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work."***

### *Justification*

*Reproductive risks exist for both men and women, and should be taken into account more generally as they are important even before the moment of conception.*

### **Amendment 21**

#### **Proposal for a directive – amending act**

#### **Article 1 – point -1 j (new)**

Directive 92/85/EEC

Article 5 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**-1j. In Article 5, paragraph 2 is replaced by the following:**

**"2. If the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible, [...] the employer shall take the necessary measures to move the worker concerned to another job."**

### *Justification*

*Explanation: the current text of the various subparagraphs gives a far too wide opportunity to employers to argue that they cannot adapt the workplace or offer an alternative job. By deleting this very open text, sufficient scope remains for the employer to argue that offering such alternatives is not technically or objectively feasible.*

### **Amendment 22**

#### **Proposal for a directive – amending act**

#### **Article 1 – point -1 k (new)**

Directive 92/85/EEC

Article 5 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**-1k. In Article 5, paragraph 3 is replaced by the following:**

**"3. If moving her to another job is not technically and/or objectively feasible, [...] the worker concerned shall be granted leave in accordance with national legislation and/or national practice for the whole of the period**

**necessary to protect her safety or health."**

*Justification*

*Explanation: the current text of the various subparagraphs gives a far too wide opportunity to employers to argue that they cannot adapt the workplace or offer an alternative job. By deleting this very open text, sufficient scope remains for the employer to argue that offering such alternatives is not technically or objectively feasible.*

**Amendment 23**

**Proposal for a directive – amending act**

**Article 1 – point -1 l (new)**

Directive 92/85/EEC

Article 7 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

***-1l. In Article 7(2), point b is replaced by the following:***

***"(b) leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible [...]."***

**Amendment 24**

**Proposal for a directive – amending act**

**Article 1 – point 1**

Directive 92/85/EEC

Article 8 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 18 weeks ***allocated before and/or after confinement.***

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 18 weeks, ***with the option of also taking up to two weeks prior to confinement.***

*Justification*

*Women workers need to be protected against any pressure from employers with regard to non-mandatory pre-confinement maternity leave.*



## Amendment 25

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 92/85/EEC

Article 8 – point 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. If the worker breastfeeds her child, the maximum period of 18 weeks' maternity leave may be increased by six additional weeks.***

*Justification*

*According to WHO Recommendation A55/15, a young child should be exclusively breastfed during the first six months of its life. An additional six weeks have therefore been added to this article.*

## Amendment 26

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The maternity leave stipulated in paragraph 1 shall include compulsory leave of at least six weeks after childbirth. The Member States ***shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth.***

2. The maternity leave stipulated in paragraph 1 shall include compulsory leave of at least six weeks after childbirth. The Member States ***may extend the compulsory portion of the maternity leave under this Directive to a maximum of eight weeks after the birth and/or a maximum of six weeks before the birth.***

*Justification*

*Without a rule prohibiting working before the birth, there is a risk that a pregnant woman will come under much greater pressure than before, from herself or from others, to work until shortly before her child is born. This situation can entail great risks for the health of both the mother and her unborn child. The Commission itself, in its 'Detailed explanation' of the draft Directive (p.9) stresses the importance of pregnant women being able to decide freely*

*whether to take part of maternity leave before the birth. Women need protection so that they can freely exercise this choice without compulsion. This is provided by the principle of a ban on working before the birth, with an optional opt-out.*

## **Amendment 27**

### **Proposal for a directive – amending act**

#### **Article 1 – point 1**

Directive 92/85/EEC

Article 8 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. The worker must indicate her chosen period of maternity leave at last two months before the starting date.***

*Justification*

*Introduction of an obligation on notification of the maternity leave period provides planning certainty for enterprises. Otherwise they, particularly SMEs, would face considerable organisational difficulties.*

## **Amendment 28**

### **Proposal for a directive – amending act**

#### **Article 1 – point 1**

Directive 92/85/EEC

Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. Member States shall take the necessary measures to ensure that additional leave is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities and multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated.

4. Member States shall take the necessary measures to ensure that additional leave is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities, ***mothers with disabilities***, and multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated.

*Justification*

*The greater challenges faced in society by mothers with disabilities mean that in many cases they require additional maternity leave in order to adapt to their new circumstances and ensure the satisfactory evolution of their family life.*

## Amendment 29

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5

#### *Text proposed by the Commission*

5. Member States shall ensure that any period of sick leave due to illness or complications arising out of pregnancy occurring four weeks or more **before** confinement **does** not impact on the duration of maternity leave.

#### *Amendment*

5. Member States shall ensure that any period of sick leave due to illness, complications arising out of pregnancy **or attested postnatal depression** occurring four weeks or more **before or after** confinement **do** not impact on the duration of maternity leave.

#### *Justification*

*The aim of this amendment is to ensure that the protective measures on illness also include the specific case of postnatal depression, which affects 10-15 of women and has significant repercussions for work and family life.*

## Amendment 30

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 92/85/EEC

Article 8 – point 5 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**5a. This Directive also applies to self-employed workers, and Member States shall make the necessary adjustments to their respective laws in order to guarantee equal employment rights, as regards maternity leave.**

#### *Justification*

*Self-employed workers should not be treated differently from nor enjoy fewer rights than employees.*

## Amendment 31

**Proposal for a directive – amending act**

**Article 1 – point 1**

Directive 92/85/EEC

Article 8 – paragraph 5a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Member States shall adopt suitable measures for the recognition of postnatal depression as a serious illness, and shall support awareness campaigns aimed at disseminating accurate information on this illness and correcting the prejudices and possible stigmatisation which it can still attract.***

*Justification*

*The aim of this amendment is to raise Member States' awareness of the need for official recognition of postnatal depression as an illness, given that it affects 10-15% of women and has significant repercussions for work and family life.*

**Amendment 32**

**Proposal for a directive – amending act**

**Article 1 – point 2**

Directive 92/85/EEC

Article 10 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The Member States shall take the necessary measures to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy ***to the end of the maternity leave provided for in Article 8(1)***, save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

1. The Member States shall take the necessary measures to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy to ***at least four months after childbirth***, save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

*Justification*

*A ban on dismissal for up to four months after childbirth seems advisable. Mothers are in particular need of protection just after the end of maternity leave, in their first weeks back at*

*work. This is when they will first experience in practice the difficulties of combining work and family. We therefore advocate that the end of the period when dismissal is prohibited should not be obligatorily tied to the end of maternity leave.*

## **Amendment 33**

### **Proposal for a directive – amending act**

#### **Article 1 – point 2**

Directive 92/85/EEC

Article 10 – point 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall take appropriate measures to ensure the safety and health of pregnant workers, with regard to ergonomic conditions, working time (including night work and change of job), work intensity, and increasing protection against specific infectious agents and ionising radiation.***

*Justification*

*Protecting the health and safety of pregnant workers should be a major concern of this directive.*

## **Amendment 34**

### **Proposal for a directive – amending act**

#### **Article 1 – point 2**

Directive 92/85/EEC

Article 10 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing. If the dismissal occurs within ***six months*** following the end of maternity leave as provided for in Article 8(1), the employer must cite duly substantiated grounds for her dismissal in writing ***at the request of the worker concerned.***

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing. If the dismissal occurs within ***twelve months*** following the end of maternity leave as provided for in Article 8(1), the employer must cite duly substantiated grounds for her dismissal in writing.

### *Justification*

*During this period, the grounds for dismissal of a worker should be cited whether or not the worker has so requested.*

### **Amendment 35**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 3 – point b**

Directive 92/85/EEC

Article 11 – point 2 – point c

#### *Text proposed by the Commission*

(c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence;

#### *Amendment*

(c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence; ***in exceptional situations relating to the restructuring or substantial reorganisation of the production process, steps shall always be taken to ensure that the worker can discuss with her employer the impact of such changes on her work situation and, indirectly, their personal situation;***

### *Justification*

*This point is important because, should special circumstances arise (e.g. financial crises) which may be harmful to the situation of women on maternity leave and cause them to lose their entitlements, their position at work may be threatened unless they examine with the employer the implications of restructuring measures.*

### **Amendment 36**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 3 – point b**

Directive 92/85/EEC

Article 11 – point 2 – point c a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***“(ca) the maintenance for workers within the meaning of Article 2 of opportunities***

*for career development through education along with ongoing professional and additional training with a view to consolidating their career prospects;"*

*Justification*

*This is to ensure that the fact that women are mothers does not adversely affect their career prospects. Employers should, in consultation with the workers concerned, take the necessary education and training measures to ensure that the workers' career prospects are maintained.*

**Amendment 37**

**Proposal for a directive – amending act**

**Article 1 – point 3 – point b**

Directive 92/85/EEC

Article 11 – point 2 – point c b (new)

*Text proposed by the Commission*

*Amendment*

*(cb) when using maternity leave it must not be prejudicial to the worker's pension rights, the period of maternity leave must be counted as a period of employment for pension purposes, and workers must not suffer any reduction of pension rights through taking maternity leave.*

*Justification*

*It is important to ensure that allowances paid to workers during maternity leave do not adversely affect their pension entitlements. Member States should prevent this from happening and provide compensation for any loss of pension rights.*

**Amendment 38**

**Proposal for a directive – amending act**

**Article 1 – point 3 – point d**

Directive 92/85/EEC

Article 11 – point 5

*Text proposed by the Commission*

*Amendment*

5. Member States shall take the measures necessary to ensure that workers, within

5. Member States shall take the measures necessary to ensure that workers, within

the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers' and workers' needs into account.

the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers' and workers' needs into account. ***That request may also be made by the parent, spouse or partner of the worker granted maternity leave and shall be treated in the same way.***

#### *Justification*

*For the purposes of sharing responsibilities, it is important that the worker's parent, spouse or partner may, following the period of maternity leave, request these measures to adjust working hours and patterns.*

#### **Amendment 39**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 3 – point d**

Directive 92/85/EEC

Article 11 – point 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Member States shall take the measures to ensure that employers provide sufficient breaks and appropriate accommodation for workers that have returned from maternity leave and wish to continue breastfeeding.***

#### *Justification*

*According to WHO Recommendation A55/15 "infants should be exclusively breastfed for the first six months of life to achieve optimal growth, development and health. Thereafter, to meet their evolving nutritional requirements, infants should receive nutritionally adequate and safe complementary foods while breastfeeding continues for up to two years of age or beyond". This article has been added to ensure that women are able to continue breastfeeding beyond their six months of maternity leave.*

#### **Amendment 40**



**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 92/85/EEC

Article 12a – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.***

*(If this amendment is adopted, Paragraph 5 shall be amended accordingly to read: 'Paragraphs 1 to 4a shall also apply to any legal proceedings commenced according to Article 12.')*

**Amendment 41**

**Proposal for a directive – amending act**

**Article 1 – point 7**

Directive 92/85/EEC

Article 12d

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that the body or bodies designated under Article 20 of Directive 2002/73/EC as recast by Directive 2006/54/EC for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not to the worker's health and safety.

Member States shall ensure that the body or bodies designated under Article 20 of Directive 2002/73/EC as recast by Directive 2006/54/EC for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not ***solely*** to the worker's health and safety.

## **Amendment 42**

### **Proposal for a directive – amending act Article 2 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States may adopt preventive measures for the protection and safety at the workplace of pregnant workers and mothers of newly-born infants.***

*Justification*

*Workplace stress can have an adverse psychological affect on pregnant women and mothers of newly-born infants and can have repercussions for the foetus or infant.*

## **Amendment 43**

### **Proposal for a directive – amending act Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The social partners at European level are requested to discuss the framework agreement on parental leave in order to involve both parents in improving the balance between private and working life when they have a child.***

*Justification*

*The proposal amending Directive 92/85/EEC does not specify the measures required to ensure effective use of maternity leave and provide for a clear transition between the end of maternity leave and the return to employment, such as childcare facilities, paternity leave and parental leave.*

## **Amendment 44**

### **Proposal for a directive – amending act Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. It is recommended that the rules arising from this Directive be transcribed in the text of collective and individual work contracts in the Member States.***

### *Justification*

*Women workers very often do not avail themselves of their rights because they do not know they are protected by the law. If those rights are referred to in their contracts, the nature of the applicable legislation becomes more transparent.*

## PROCEDURE

<b>Title</b>	Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding		
<b>References</b>	COM(2008)0637 – C6-0340/2008 – 2008/0193(COD)		
<b>Committee responsible</b>	FEMM		
<b>Opinion by</b> Date announced in plenary	EMPL 21.10.2008		
<b>Associated committee(s) - date announced in plenary</b>	18.12.2008		
<b>Rapporteur</b> Date appointed	Jamila Madeira 4.11.2008		
<b>Discussed in committee</b>	11.2.2009	2.3.2009	30.3.2009
<b>Date adopted</b>	31.3.2009		
<b>Result of final vote</b>	+: 29 -: 3 0: 1		
<b>Members present for the final vote</b>	Jan Andersson, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Alejandro Cercas, Derek Roland Clark, Jean Louis Cottigny, Jan Cremers, Harald Ettl, Richard Falbr, Joel Hasse Ferreira, Stephen Hughes, Ona Juknevičienė, Jean Lambert, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Juan Andrés Naranjo Escobar, Csaba Öry, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Elisabeth Schroedter, José Albino Silva Peneda, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker		
<b>Substitute(s) present for the final vote</b>	Rumiana Jeleva, Jamila Madeira, Adrian Manole, Csaba Sógor		
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Jean-Pierre Audy, Vasilica Viorica Dăncilă		

## PROCEDURE

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<b>References</b>	COM(2008)0637 – C6-0340/2008 – 2008/0193(COD)			
<b>Date submitted to Parliament</b>	3.10.2008			
<b>Committee responsible</b> Date announced in plenary	FEMM 21.10.2008			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	EMPL 21.10.2008	ITRE 21.10.2008		
<b>Not delivering opinions</b> Date of decision	ITRE 3.11.2008			
<b>Associated committee(s)</b> Date announced in plenary	EMPL 18.12.2008			
<b>Rapporteur(s)</b> Date appointed	Edite Estrela 12.11.2008			
<b>Discussed in committee</b>	19.1.2009	10.2.2009	9.3.2009	31.3.2009
<b>Date adopted</b>	16.4.2009			
<b>Result of final vote</b>	+: 18 –: 6 0: 5			
<b>Members present for the final vote</b>	Edit Bauer, Hiltrud Breyer, Edite Estrela, Ilda Figueiredo, Věra Flasarová, Lissy Gröner, Zita Gurmai, Doris Pack, Marie Panayotopoulos-Cassiotou, Zita Pleštinská, Karin Resetarits, Teresa Riera Madurell, Eva-Riitta Siitonen, Eva-Britt Svensson, Anne Van Lancker, Anna Záborská			
<b>Substitute(s) present for the final vote</b>	Gabriela Crețu, Ana Maria Gomes, Donata Gottardi, Filiz Hakaeva Hyusmenova, Christa Klaß, Marusya Ivanova Lyubcheva, Ria Oomen-Ruijten, Maria Petre, Heide Rühle, Bernadette Vergnaud			
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Wolfgang Bulfon, Maddalena Calia, Catherine Neris, Jacques Toubon			